

**TESTIMONY**  
**OF**  
**LAWRENCE PERRY**  
**ACTING DISTRICT OF COLUMBIA AUDITOR**  
**COMMITTEE ON GOVERNMENT OPERATIONS**  
**COUNCIL OF THE DISTRICT OF COLUMBIA**  
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**CHAIRMAN McDUFFIE AND MEMBERS OF THE COMMITTEE ON GOVERNMENT OPERATIONS:** I am Lawrence Perry, Acting District of Columbia Auditor. With me today is Laura Hopman, Assistant Deputy Auditor. Thank you for the opportunity to appear before the Committee to discuss the Department of General Services' direct expenditures and subcontracting expenditures with Certified Business Enterprises.

The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (the Act), as written prior to the most recent amendments that took effect on October 1, 2014, required all District agencies to procure 50 percent of their expendable budgets with Small Business Enterprises. The Office of the D.C. Auditor publishes quarterly reports that detail District of Columbia agencies' compliance with Small Business Enterprise expenditure goals. Our most recent report, issued on September 3, 2014, included agency expenditures through the 3<sup>rd</sup> quarter of fiscal year 2014.

To track SBE expenditures, the Department of Small and Local Business Development requires each agency to self-report their SBE expenditures. We have found that these self-reported expenditures are often unreliable. To ensure that our reports contain reliable figures, we obtain expenditure data directly from the District's System of Accounting and Reporting (SOAR), the official record of government transactions. Using verified data obtained from SOAR enables us to be certain that we are only crediting agencies for direct payments to SBEs that were certified on the date of the expenditure.

We found that DGS spent roughly \$19 million with SBEs through the 3<sup>rd</sup> quarter of fiscal year 2014. As of October 27, 2014, DGS reported SBE expenditures of roughly \$73 million through the 3<sup>rd</sup> quarter of fiscal year 2014. The difference between ODCA's total and DGS' total is approximately \$54 million. In analyzing DGS' SBE goal and self-reported expenditures, we found several reasons for the difference.

To establish DGS' fiscal year 2014 SBE expenditure goal, DSLBD obtained DGS' appropriated operating and capital budgets. DSLBD then asked DGS to document, as exclusions, the items in their operating and capital budgets that they could not reasonably be expected to obtain from SBEs. Upon DSLBD's approval, the exclusions were subtracted from the agency's appropriated budget to determine the agency's expendable budget. To determine the SBE goal, the expendable budget was multiplied by 50 percent.

In fiscal year 2014, DGS had an operating budget of \$395 million and a capital budget of \$20 million. In reviewing DGS' SBE expenditure goal, we found that DGS requested to exclude

their entire capital budget of \$20 million from their fiscal year 2014 SBE expenditure goal. DSLBD approved this exclusion. Therefore, DGS fiscal year 2014 SBE expenditure goal was based solely on their operating budget.

When we reviewed DGS' self-reported expenditures, we found that \$52 million of the reported SBE expenditures were capital expenditures. Because DGS' fiscal year 2014 goal was based solely on operating dollars, counting capital expenditures toward DGS' SBE goal is simply illogical.

In addition, we found several other inaccuracies in DGS' self-reported expenditure totals. Please note that the following categories of expenditures are not mutually exclusive:

- First, we found that roughly \$43 million was attributable to appropriation years 2000-2013. When determining DGS' 2014 SBE expenditure goal, DSLBD's starting point was DGS' appropriated operating and capital budgets for fiscal year 2014 only. Therefore, expenditures attributable to prior appropriation years should not count toward the fiscal year 2014 SBE goal.
- Second, \$6.7 million was misreported as having been spent with certified SBEs when in fact those dollars were spent with companies who were not certified at the time of the expenditure.
- Third, at least \$19 million of the expenditures were not recorded in SOAR, meaning that they are likely subcontracting expenditures that DGS' prime contractors made with SBE firms. While we recognize the value of subcontracting expenditures with SBEs, we have never counted these types of indirect expenditures toward an agency's SBE goal in our

reports. A separate section of the Act establishes unique requirements for prime contractors subcontracting with SBEs and we do not feel that it is in the spirit of the Act to count SBE subcontracting expenditures toward both the agency goal and the prime contractor's subcontracting goal. Furthermore, neither DGS nor DSLBD are independently verifying subcontracting expenditures submitted by prime contractors so we have no reliable data on which to base our analysis.

With regards to contractor requirements to subcontract with SBEs, our recent report entitled "District of Columbia Agencies' and Contractors' Compliance with Subcontracting Requirements Needs Significant Improvement" details the results of our examination and assessment of District of Columbia government agencies' and contractors' compliance with these specific subcontracting requirements of the Act.

In summary, the Act stated that:

- All District of Columbia agencies that execute construction and non-construction contracts in excess of \$250,000 must subcontract at least 35 percent of the dollar volume to Small Business Enterprises (SBEs).
- Agencies must reject contractor proposals for solicitations that require subcontracting if the proposals do not include CBE subcontracting plans.
- Contractors must provide to the contracting officer and the Director of DSLBD copies of the executed contracts with the subcontractors identified in the subcontracting plan;

Contractors were also subject to fines of \$15,000 or 5 percent of the total amount of the work that the contractor was to subcontract to CBEs, whichever is greater, for each willful breach of a CBE subcontracting plan. The Act was silent on which government agency is responsible for monitoring compliance with the CBE subcontracting plan or for assessing penalties.

For our review, we undertook an examination of the Department of General Services (DGS) subcontracting activities which covered select contracts for completed school modernization projects that were in effect during fiscal year 2008.

We found that:

- Complete subcontracting plans were not submitted by all contractors; and
- Proposals were not rejected if a subcontracting plan was not submitted.

We were unable to confirm if executed subcontracts were submitted to the Director of DSLBD, as required.

Overall, we found that DGS and contractors were not complying with the requirements of the Act. Based on our limited sample, DGS often executed contracts without valid CBE subcontracting plans in place. Even when CBE subcontracting plans did exist, DGS did not adequately monitor compliance with the plans. Furthermore, contractors may not be aware of the reporting requirements to DSLBD and ODCA.

The six contractors in our sample reported spending approximately \$97 million with CBEs during the duration of the projects, however monitoring of these reported expenditures was inadequate. There was no process on the part of DGS to verify the status of the CBEs reported by the contractors or the amounts paid to the CBEs listed on the contractor's CBE expenditure reports.

Without consistent establishment of CBE subcontracting plans and adequate monitoring of ongoing contracts, the District is at risk of failing to stimulate and foster economic growth and development of businesses based in and serving the District of Columbia, particularly CBEs. Inadequate monitoring and assessment of penalties also results in lost revenue.

In our report, we proposed the establishment of an inter-agency working group comprised of DSLBD, OCP, DGS, and the other 15 agencies with independent procurement authority and the establishment of a central database accessible by all relevant agencies. We also identified the benefits of establishing the working group, have already met with DSLBD, OCP and DGS and will continue to work with these agencies to improve compliance with the Act's subcontracting requirements.

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Mr. Chairman, this concludes my prepared remarks. I will respond to any questions that you have at this time.